



April 6, 2023

VIA ECF AND EMAIL

The Honorable Karin J. Immergut
Mark O. Hatfield US Courthouse
Room 1307
1000 SW 3rd Avenue
Portland, OR 97204-2946
Immergut_crd@ord.uscourts.gov

Re: *Petition of Novalpina Capital Partners I GP S.A.R. L. for Judicial Assistance*
Pursuant to 28 U.S.C. § 1782, et al.
US District Court, Oregon, Case No 3:23-mc-00082-IM

Dear Judge Immergut:

This firm along with Tara J. Plochocki, *pro hac vice*, of Lewis Baach Kaufmann Middlemiss pllc, represents the Petitioner in this matter for judicial assistance filed under 28 U.S.C. § 1782 (“Section 1782”).

Petitioner filed its *ex parte* petition, memorandum of law, and supporting declarations and exhibits on January 27, 2023. The requested relief is for the purpose of obtaining limited, but critical, discovery for use in connection with foreign civil proceedings in the Commercial Chambers of the Luxembourg District Court. The discovery is needed to (1) aid Petitioner’s defense against a lawsuit filed by NOAL GP S.à.r.l. in the Commercial Chambers of the Luxembourg District Court; and (2) support a civil fraud claim which will be filed in the Luxembourg District Court promptly after review and analysis of the requested discovery. In the active proceeding, the Luxembourg District Court has set April 26, 2023 as the deadline for briefing on the admissibility of the claim against Petitioner. The briefing on the merits of the claim likely will be soon thereafter, making the need for the discovery more acute than when the Petition was filed earlier this year.

In the normal course of § 1782 proceedings, *ex parte* petitions are reviewed for compliance with statutory and discretionary factors and, if adequate, are granted by the Court. *E.g., In re Letter of Request from Loc. Ct. in Kusel, Germany*, No. 1:22-CV-01009-CL, 2022 WL 5142753, at *1 (D. Or. Oct. 5, 2022) (granting *ex parte* § 1782 petition). The Court exercises this discretion in keeping with the “twin aims” of “providing efficient assistance” to litigants before foreign tribunals and encouraging the

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same by example. *Id.* at *4, quoting *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 252 (2004). Petitioner then serves subpoenas as authorized; Respondents may comply, move to quash, serve objections, or otherwise challenge the sufficiency of the § 1782 petition. *Id.* (ordering a return date of at least 21 days to allow respondents to contest the subpoenas). If Respondent challenges the sufficiency of the petition, the Court may revisit its initial decision. *Banca Pueyo SA v. Lone Star Fund IX (US), L.P.*, 55 F.4th 469, 474 (5th Cir. 2022) (*ex parte* petitions remain subject to “adversarial testing”).

Petitioner respectfully submits this letter seeking guidance from the Court on the status of this proceeding so that it may inform the Luxembourg District Court of the same, and due consideration may be paid to this Court’s timeline when setting deadlines in the pending case abroad.

Sincerely,



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